



AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. § Except as provided in Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of

the following:

- (i) cachexia or wasting syndrome;
- (ii) severe or chronic pain;
- (iii) severe nausea;
- (iv) seizures, including but not limited to seizures caused by epilepsy; or
- (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis

or Crohn's disease; or

- (c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

(4) "Marijuana" has the meaning provided in 50-32-101.

(5) "Medical use" means:

(a) the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;

(b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or

(c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.

(6) "Paraphernalia" has the meaning provided in 45-10-101.

~~(6)~~(7) "Physician" means a person who is licensed under Title 37, chapter 3.

~~(7)~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(8)~~(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the

qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that the~~ the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the~~ minor:

- (i) consents to the medical use of marijuana by the minor;
- (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;
and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

(b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.

(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

- (a) the name, address, and date of birth of the qualifying patient;
- (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
- (c) the date of issuance and expiration date of the registry identification card; and
- (d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and

are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;
or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 4. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A ~~qualifying patient or caregiver~~ person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the

purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 5. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; ~~or~~

(b) the use of marijuana by a caregiver; or

~~(b)~~(c) the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 6. Section 50-46-206, MCA, is amended to read:

"50-46-206. Affirmative defense. Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) (a) is engaged in the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or a caregiver; or

(b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

- END -

I hereby certify that the within bill,
SB 0325, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 325
INTRODUCED BY PERRY

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